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No. 85-744

NOV 27 1985

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

STATE OF MAINE,

Petitioner

vs.

JAY G. THIBODEAU,

Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT TO THE
STATE OF MAINE

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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B. RULES

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STATEMENT OF THE CASE

Pursuant to U.S.Sup.Ct.R. 34.2, the Respondent hereby provides the following supplement to the Respondent's Statement of the Case presented in its Petition for a Writ of Certiorari.

At the time of the interrogations of October 28, 1983, the Respondent was barely 18 years old. (App.A at 5.)

The initial interrogation of the Respondent, which occurred on the morning of October 28, 1983, was conducted by three officers. (App.A at 4-5; S.H.T. 17, 28.) Two of these officers were in uniform and carried side arms. (S.H.T. 15, 26.) This interrogation was carried out by one of the uniformed officers. (S.H.T. 17-18.) Detective Graves (one of the officers present) characterized the Respondent as being, at that time, the "only possible suspect." (App.A at 17; S.H.T. 27.)

As a result of his observations of the Respondent during that interrogation, Detective Graves perceived that the Respondent was "quite nervous." (App.A at 17; S.H.T. 18.) Detective Graves also felt that "it was very possible that something had happened to Mr. Tower [the victim] and he was either deceased or somewhere where he could not make contact with anyone." (App. A at 17; S.H.T. 20.) Detective Graves felt that the Respondent was hiding information concerning the disappearance of the victim. (App.A at 17; S.H.T. 31.)

By the time Detective Graves and his associate officer returned to the Respondent's residence on the afternoon of October 28, 1983, the investigating officers had determined that the Respondent was the last person seen with the victim. (S.H.T. 21, 30.) According to Detective Graves, the Respondent was "more than marginally a suspect." (App.A at 15-16; S.H.T. 30.)

When the officers arrived at the Respondent's residence that afternoon, they asked the Respondent merely if he would show them the route he claimed that morning to have taken with the victim

the previous day. (App.A at 6; S.H.T. 14, 32.) In fact, when the Respondent was escorted to the unmarked police cruiser, he was driven around the corner to a side street. (App.A at 6-7; S.H.T. 25, 45.) This was done in order to accomplish their purpose of isolating the Respondent and talking with him alone. (App.A at 6; S.H.T. 80, 81.)

The Respondent was seated alone in the backseat of the cruiser. (App.A at 18; S.H.T. 32.) The cruiser was equipped with only two doors, and the back windows did not open. (Id.; S.H.T. 33.) The officers did not tell the Respondent that he was free to leave. (App.A at 18; S.H.T. 34.) In order for him to be able to leave the vehicle, one of the two officers seated in the front of the cruiser would have had to get out of the vehicle himself. (S.H.T. 34.)

The Respondent himself did not realize that he could leave the cruiser or terminate the questions. (S.H.T. 116, 124.) He was not advised that he had the right to remain silent. (S.H.T. 32.)

At one point during the afternoon interrogation, the Respondent asked one of the officers if he were a suspect. The officer stated that the Respondent was the last person to see the victim alive and that the should answer his own question. Although the officer later testified that the Respondent was in fact the only suspect at that time, (S.H.T. 34) he did not inform the Respondent of this, despite the Respondent's inquiry. After the exchange in the cruiser, the Respondent declared, "Well, I guess I am [the suspect]." (App.A at 7-8; S.H.T. 81-82.)

ARGUMENT

The Petitioner argues that the Respondent was not in custody when he made the statements on the afternoon of October 28, 1983, as the concept of "custody" is discussed in Beckwith v. United States, 425 U.S. 341 (1976), Oregon v. Mathiason, 429 U.S. 492 (1977), and California v. Beheler, 463 U.S. 1121 (1983). In response, the Respondent asserts that the factual bases for this Honorable Court's opinions in those three cases render them clearly distinguishable from the instant case and that, for this reason, the Maine Supreme Judicial Court was not in error when it concluded that custody existed, for the purposes of Miranda v. Arizona, 384 U.S. 436 (1966).

Unlike the circumstances in Beckwith, in which the interview of the suspect occurred at the suspect's home, following his invitation for the investigating officers to enter his home, 425 U.S. at 342-43, the interrogation of the Respondent occurred while he was seated incommunicado in the backseat of a two-door unmarked police cruiser. The Respondent was unable to leave the presence of the officers without their cooperation in leaving the vehicle themselves. Indeed, this was the very setting in which the officers hoped to create. Detective Graves testified that he hoped to separate the Respondent from his parents. The reason given to the Respondent for the officers' mission was simply to retrace the route which the Respondent had told them, earlier that morning, that he had taken with the victim. In fact, after the Respondent had agreed to accompany the officers, they escorted him to the cruiser and drove a short distance to a side street, where the interview was conducted in a stationary vehicle.

Additionally, in Beckwith, the interrogation of the suspect was clearly exploratory in nature. See 425 U.S. at 343. Here, on the other hand, Detective Graves felt that the Respondent's account provided that morning had not been truthful. Before the

afternoon interrogation commenced Graves had formed the belief that the victim was either dead or incapacitated and that the Respondent was connected with that situation. Therefore, Detective Grave's suspicions were substantial, as he felt that the Respondent was hiding something.

While Beckwith (as with the Respondent) was the focus of an investigative inquiry, 425 U.S. at 345, Beckwith (unlike the Respondent) was clearly informed that he could not be compelled to answer any questions or submit any information. Id. at 343. Beckwith was also informed that any information which he provided to the investigators could be used against him in a subsequent criminal proceeding. Id. Finally, Beckwith was informed that he could proceed with the assistance of an attorney. Id. Therefore, in Beckwith there existed objective indicia that the suspect was not subject to a deprivation of freedom of action. The Respondent, however, was never informed of any such limitations on the interrogating officers' actions.

Finally, while the interview in Beckwith was "friendly" and "relaxed", 425 U.S. at 343, the interrogation of the Respondent on the afternoon of October 28, 1983, occurred in a qualitatively different setting. The subject of this interrogation was barely 18 years old. It constituted the second police-initiated contact that day. The locus of the interrogation itself renders it a far different situation than that presented to this Court in Beckwith.

Similarly, Oregon v.Mathiason does not compel a conclusion in the instant case that the Respondent was in custody. Significantly, the suspect in Mathiason was expressly told that he was not under arrest. 429 U.S. at 493. No such disclaimer was imparted in this case, again establishing the absence of any objective indication that the Respondent was free to leave the presence of the investigating officers.

In Mathiason, it was the suspect, rather than the officers, who suggested that the interview occur at the state patrole

office. 429 U.S. at 493. Here, in contradistinction, the interrogating officers successfully desired to place the Respondent in their presence alone. Indeed, the Respondent testified that he felt that he had no choice but to accompany them. Therefore, it cannot be said that the setting of the interrogation was created by the Respondent in the instant case, unlike that in Mathiason.

The interview in Mathiason lasted approximately 30 minutes. 429 U.S. at 493-94. Here, on the other hand, the entire length of contact between the Respondent and the investigating officers approached 90 minutes. Indeed, the initial interrogation, which occurred in the stationary cruiser lasted between 15 and 40 minutes. The prolonged nature of this interrogation, during which time the Respondent remained incommunicado in the police-dominated atmosphere of the cruiser, objectively shows that the investigating officers deprived the Respondent of his freedom.

Finally, Detective Graves testified that, as of the commencement of the interview on the afternoon of October 28, 1983, the Respondent was the "only possible suspect." Indeed, during the course of the afternoon interrogation, one of the officers suggested to the Respondent that he in fact was the suspect in the disappearance of the victim. In contradistinction, the evidence against the suspect in Mathiason was relatively weak. The officers proceeded soley on the speculation of the alleged victim, who told them that the suspect was the only possible perpertrator she could think of. 429 U.S. at 493. Because the officers in Mathiason held a much weaker impression of the suspect's involvement in the offense than did the officers in the instant case, this Court's conclusion in Mathiason that no custody existed is not compelled here.

Finally, this Court's opinion in California v. Beheler does not mandate a conclusion of custody in the instant case. Again, in Beheler, the suspect was expressly informed that he was not under arrest. 463 U.S. at 1122. As with the officers' statement

in Mathiason and Beckwith, a warning of this type constitutes significant objective evidence of the absence of restraint. That the officers in the instant case provided no such warning to the Respondent, in light of the circumstances of that interrogation, demonstrates the existence of a restraint on the Respondent's freedom during the course of that interrogation.

Also, as in Mathiason, the interview of the suspect in Beheler was of limited duration: less than 30 minutes. 463 U.S. at 1122. The more prolonged contact between the officers and the Respondent, while the Respondent was confined in the rear of the police cruiser, strongly suggests that the Respondent was not free to leave.

Beheler provides that a determination of the existence of custody is made from an examination of the totality of circumstances. 463 U.S. at 1125. An examination of those circumstances in the instant case shows that the Respondent had been deprived of his freedom in a significant way during the interrogation conducted on the afternoon of October 28, 1983. Mathiason, Beckwith and Beheler do not compel a contrary result. The officers' focus on the Respondent, while not determinative in itself, is clearly a germane factor in the "custody" analysis. Similarly, the coercive setting, while perhaps not by itself determinative, is an additional signal which, combined with the other factual components of the instant case, demonstrates the existence of custody. The holding of the Maine Supreme Judical Court, finding that such custody existed, is therefore correct and should not be the subject of review by this Court.

CONCLUSION

For these reasons, the State of Maine's Petition for a Writ of Certiorari to the Supreme Judicial Court of the State of Maine should be denied.

Respectfully Submitted,

DATED: 11/25/85

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CERTIFICATE OF SERVICE

I, Jeffrey L. Hjelm, Esquire, Attorney of record for Respondent, hereby certify that pursuant to U.S. Sup. Ct. Rule 28.3 I have caused three (3) copies of the foregoing "Brief in Opposition to Petition for a Writ of Certiorari" to be served on the only other party to this proceeding by depositing said copies in the United States mail, postage prepaid, addressed to Petitioner's Counsel of Record, Wayne S. Moss, Esquire as follows:

Wayne S. Moss, Esq.
Assistant Attorney General
State House Station 6
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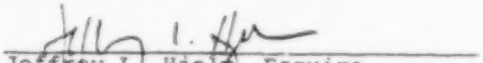
Dated at Bangor, Maine this 26th day of November, 1985.



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